

FILED
9/17/2021

JJ

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
KEVIN SMITH,)
)
Defendant.)

21 CR 128
Honorable Judge
John F. Kness

MOTION FOR CLARIFICATION REGARDING IN PERSON HEARING

Now comes the defendant, Kevin Smith, by and through himself, submits this motion for clarification seeking that the court state for the record the clear reason for his ordered in-person hearing that took place on July 30, 2021 (originally ordered/scheduled for July 22, 2021). This motion also seeks an order to conduct future court appearances via video conference or telephonically at least until the general order 20-0022 of the Northern District of Illinois is lifted or changed. Listed below are facts that are on the record and should be considered along with the memorandum filed in support of this motion:

1. At the first hearing, with Judge John F. Kness, on May 18, 2021, which was held telephonically, a video hearing was scheduled for May 26, 2021 instead of an in-person hearing due to the fact that the defendant, Kevin Smith, and his family were not feeling well.

2. At the hearing on May 18, 2021, Judge John F. Kness stated he would schedule a video conference for the next hearing because he needed to see the defendant's face to communicate with the defendant, Kevin Smith, more effectively.
3. At the hearing on May 18, 2021, Judge John F. Kness stated there would be no prejudice proceeding by video.
4. At the hearing on May 26, 2021, Judge John F. Kness stated he was fine with Kevin Smith, the defendant, to continue video appearances and not appear in person as long as general order 20-0022 was still in effect.
5. At the hearing on May 26, 2021, Judge John F. Kness scheduled a video hearing for June 9, 2021, so the defendant, Kevin Smith, did not have to come into the courtroom.
6. At the hearing on June 9, 2021, Judge John F. Kness stated that, if the general orders of the district get changed from having a default toward telephonic and video hearings, he would require the defendant, Kevin Smith, to come into the courtroom.
7. At the hearing on June 30, 2021, Stephen Heinze, attorney for the United States, stated that it was highly preferable to conduct the Faretta colloquy not only under oath, but also in person in the courtroom, although he could not explicitly find any case law to spell this out.
8. At the hearing on June 30, 2021, Judge John F. Kness stated that he was scheduling an in-person hearing because he had to have me, the defendant, Kevin Smith, in front of him in person to look at me eye to eye.
9. At the hearing on June 30, 2021, Judge John F. Kness stated that it was essential for me, the defendant, Kevin Smith, to be in front of him so he could assess my demeanor and my credibility.

10. At the hearing on June 30, 2021, Judge John F. Kness scheduled an in-person hearing for July 22, 2021.
11. At the hearing on June 30, 2021, Judge John F. Kness stated that all parties required to attend the in-person hearing would be required to wear a mask and would be socially distanced.
12. The July 22, 2021 in-person hearing was stricken due to the defendant's family medical emergency and rescheduled for July 30, 2021.
13. I, Kevin Smith, the defendant, was early for my scheduled court time on July 30, 2021, and waited with a mask on inside of courtroom 1725 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, where the Judge John F. Kness and two other women were not wearing masks while conducting other hearings.
14. I, Kevin Smith, the defendant, was wearing a mask continually for over one hour. During the intense questioning, standing in front the judge, I became dizzy. I tried to inform the judge that I was feeling dizzy, but I had to wait until he finished speaking. One of the statements that the judge made, while I was waiting to tell him about my dizziness, was about how I needed to train myself to stop talking as soon as the judge starts talking.
15. When I had the opportunity to speak, I said that I thought it would help for me to remove my mask for a moment to get some air. The judge told me that he asked the people in the courtroom and me to wear masks for my benefit.
16. On July 30, 2021, Judge Kness scheduled another in-person hearing for October 14, 2021.

Wherefore the defendant, Kevin Smith, respectfully asks the court to enter on the record the reasons for ordering the in-person hearing scheduled by Judge John F. Kness, when at each of the prior hearings in which he presided over, excluding the June 30th hearing, the defendant was told it was fine to proceed via video conference, at least until the general order 20-0022 of the district was lifted or changed. The Cares Act and the Northern District of Illinois general order 20-0022 both state that remote hearings/appearances for criminal defendants were authorized during the time that I, Kevin Smith, the defendant, was required to appear.

I, Kevin Smith, the defendant, also respectfully ask the court to order future hearings be held via video or telephonically for reasons of public health safety, at least until the general order 20-0022 by the Northern District of Illinois is lifted or amended.

ATTESTATION

I declare that to the best of my knowledge under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "KS" or "K. Smith", is written over a horizontal line.

Kevin Smith

Executed on September 17, 2021

Certificate of Service

I hereby certify that a copy of this document was sent via email on September 17, 2021 to the Northern District of IL electronic filing system at

Temporary_E-Filing@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via email on September 17, 2021 to Judge John F. Kness in care of Enjoli Fletcher at

Enjoli_Fletcher@ilnd.uscourts.gov

Notary Public

I, Dantrae Lemons, a notary public for said County and State, do certify that Kevin Smith personally appeared before me and executed the foregoing.

Witness my hand and seal this 17th day of September, 2021.

Cook (County)
Illinois (State)

Dantrae Lemons

My Commission Expires: 06/07/2022

